

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

COMMERCE BANK

Atlanta, Georgia

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)
) **Order No. ATL-99-6**
)
) **Dated: September 10, 1999**
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**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, has informed Commerce Bank, Atlanta, Georgia, OTS No. 14912 (Commerce Bank), that grounds exist to initiate an administrative civil money penalty assessment proceeding against it pursuant to 12 U.S.C. § 1818(i);¹ and

WHEREAS, Commerce Bank desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) Commerce Bank is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);

(b) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative civil money penalty assessment proceeding against such a savings association or its institution-affiliated parties. Therefore, Commerce Bank is subject to the jurisdiction of the OTS to initiate and maintain a civil money penalty assessment proceeding against it pursuant to 12 U.S.C. § 1818(i). The Director of the OTS has delegated to the Regional Director of the Southeast Region of the OTS or his designee (Regional Director) the authority to issue

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

orders of assessment of civil money penalties where the individual has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that:

- a. On October 22, 1997, Southeastern Commerce Holding Company (Southeastern) filed its application for Permission to Organize Commerce Bank, and for approval as a savings and loan holding company (the Application);
- b. On May 21, 1998, the OTS approved the Application, and required that Southeastern seek approval of the Regional Director of the Southeast Region 30 days prior to proposing any proposed major deviation or material changes from the business plan of Commerce Bank, and also seek such approval 30 days prior to commencing any new activity at the holding company level.
- c. On June 14, 1999, in a story run in the American Banker, Southeastern, billing itself as "Ebank.com, Inc." announced that it would focus primarily on small business customers, that it would exist primarily on the World Wide Web, and that it would open 24 physical "centers" by June 2001 for loan production.
- d. Southeastern and Commerce have engaged in certain activities to further this unapproved plan.
- e. To date, the OTS has not approved Commerce Bank or Southeastern to change its business plan or engage in these new activities.
- f. The activities engaged in by Southeastern and Commerce Bank in furtherance of this new business strategy constitute a violation of conditions imposed in writing by the appropriate Federal banking agency in connection with the grant of an application, including: i) the prohibition on deviations or material changes from the approved business plan without the prior written approval of the Regional Director and ii) the requirements that Southeastern provide the Regional Director advance notice prior to commencing any new activities at the holding company and that it receive his written non-objection prior to commencing the activities.

3. Consent. Commerce Bank consents to the issuance by the OTS of the accompanying Consent Order of Assessment of Civil Money Penalties (Order). Commerce Bank further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 12 U.S.C. § 1818(i). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. Commerce Bank waives the following:

- a. the right to be served with a written notice of assessment of civil money penalties against it as provided by 12 U.S.C. § 1818(i);
- b. the right to an administrative hearing of the OTS's charges against it as provided by 12 U.S.C. § 1818(i);
- c. the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- d. any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or the Equal Access to Justice Act, 5 U.S.C. § 504 or 28 U.S.C. § 2412; and
- e. the right to assert this proceeding, its consent to issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected. Commerce Bank acknowledges and agrees that its consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, as described in paragraph 2 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Commerce Bank that arise pursuant to this action or otherwise that may be or have been brought by any other governmental agency, nor any other actions, charges against or liability of Commerce Bank that may be or have been brought by the OTS.

7. Miscellaneous.

- a. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;
- b. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns;
- c. The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

- d. The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- e. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.
- f. Commerce Bank acknowledges and agrees that it must operate in accordance with all the conditions contained in the May 21, 1998 OTS approval of its Application, including the prohibition on material changes in its business plan without the prior written consent of the Regional Director.

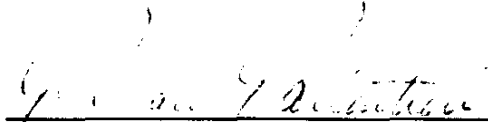
WHEREFORE, Commerce Bank, acting through its duly authorized Chief Executive Officer, executes this Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalties, intending to be legally bound hereby.

Accepted by:

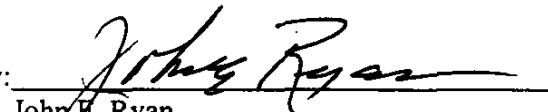
COMMERCE BANK

OFFICE OF THRIFT SUPERVISION :

By:


Richard Parlontieri
Chief Executive Officer

By:


John E. Ryan
Southeast Regional Director

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:

COMMERCE BANK

Atlanta, Georgia

Order No. ATL-99-6

Dated: September 10, 1999

CONSENT ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, Commerce Bank, Atlanta, Georgia, OTS No. 14912, has executed a Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalties (Stipulation); and

WHEREAS, Commerce Bank, by its execution of the Stipulation, has consented and agreed to the issuance of this Consent Order of Assessment of Civil Money Penalties (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(i).

NOW THEREFORE, IT IS ORDERED that:

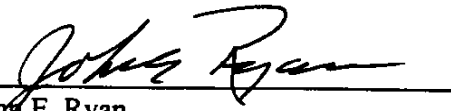
1. Commerce Bank shall pay to the OTS the sum of \$100,000. The payment shall be made according to the following schedule: (i) within ten (10) calendar days of the date of this Order, Commerce Bank shall pay to the OTS the sum of \$50,000; (ii) on or before October 31, 1999, Commerce Bank shall pay to the OTS the sum of \$25,000; and (iii) on or before November 30, 1999, Commerce Bank shall pay to the OTS the sum of \$25,000. Each of these payments shall be accomplished by tendering a certified check or bank draft made payable to the order of the Treasurer of the United States. Each check or bank draft and a copy of the Order shall be delivered, together with a cover letter stating the name of the association, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. A copy of each check or bank draft and its accompanying cover letter shall be provided by U.S. Mail to Karen K. Bruton, Regional Counsel, Southeast Region, Office of Thrift Supervision, P.O. Box 105217, Atlanta, Georgia, 30348-5217.

2. The Stipulation is made a part hereof and is incorporated herein by this reference.

3. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: _____



John E. Ryan
Southeast Regional Director